

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

VICTOR TEON LINDSEY, II,
Plaintiff

v.

FEDERAL BUREAU OF PRISONS,
RISK MANAGEMENT/TORT CLAIM
BRANCH, JOE KEFFER, and
JASON A. SICKLER
Defendant

:
: **Civil Action No. 1:09-cv-1426**
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: **(Chief Judge Kane)**
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MEMORANDUM ORDER

Before the Court is a Report and Recommendation from Magistrate Judge Malachy E. Mannion filed on August 25, 2009, advising that Plaintiff's complaint be dismissed for failure to prosecute the action under Federal Rule of Civil Procedure 41(b). (Doc. No. 9.) In a prior order, Magistrate Judge Mannion had granted Plaintiff IFP status, but had also instructed Plaintiff to file an amended complaint by August 21, 2009, because the initial complaint failed to state a claim upon which relief could be granted. (Doc. No. 8.) Although Plaintiff did not file an amended complaint within the ordered time, Plaintiff did seek an extension of time to file his amended complaint, however the motion was received by the Court after the entry of the Report and Recommendation. (Doc. No. 10.)

Although the Court did not receive the motion until August 27, 2009, the postmark date on the envelope indicates that it was mailed on Monday, August 24, 2009, and Plaintiff's motion for extension of time avers that he filed the motion on August 16, 2009, therefore indicating that the motion was turned over to the control of the prison officials for delivery on or before Friday, August 21, 2009. (Doc. No. 10.) Because in the case of *pro se* prisoner plaintiffs the time at which a motion is handed to prison officials is deemed the date of filing, Houston v. Lack, 487

U.S. 266 (1988); United States v. Rinaldi, 447 F.3d 192, 194 n.6 (3d Cir. 2006), the Court finds that Plaintiff's motion for extension of time to file an amended complaint was timely filed and should be considered prior to the Magistrate Judge's report and recommendation.

ACCORDINGLY, this 31st day of August 2009, **IT IS HEREBY ORDERED** that Plaintiff's motion for extension of time (Doc. No. 10) is **GRANTED**. Plaintiff is given until September 30, 2009 to file his amended complaint. **IT IS FURTHER ORDERED** that, in consideration of the foregoing, the report and recommendation (Doc. No. 9) is **denied** and the matter is recommitted to Magistrate Judge Mannion for further proceedings.

S/ Yvette Kane
Yvette Kane, Chief Judge
United State District Court
Middle District of Pennsylvania